

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 93-232

In re )  
 )  
 Amendment of Section 76.51 )  
 of the Commission's Rules )  
 to Include Concord, )  
 California, in the )  
 San-Francisco-Oakland-San Jose )  
 Television Market )

To: Chief, Mass Media Bureau

REPLY COMMENTS

KOVR TV, Inc., licensee of KOVR(TV), Stockton, California ("KOVR"), by its attorneys, hereby submits these Reply Comments in response to the comments filed with respect to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. 1/ KOVR supports the comments filed by Great Western Broadcasting Corp. ("Great Western") and Viacom International Inc. ("Viacom") and urges the Commission to reject the proposal to amend Section 76.51 of the Commission's rules to change the San Francisco-Oakland-San Jose, California, television market designation to include Concord, California. The comments clearly demonstrate that First Century Broadcasting, Inc., licensee of KFCB-TV, Concord, California ("KFCB"), fails to meet the "competition" and

1/ NPRM, MM Docket No. 93-232 (adopted Aug. 11, 1993). If the Commission amends Section 76.51 to include Concord, California in the San Francisco-Oakland-San Jose, California television market as proposed, stations in the Sacramento-Stockton-Modesto television market, including KOVR, could lose valuable program exclusivity and network non-duplication protection in some of the areas that they serve. 47 C.F.R. §§ 76.92-76.97, 76.151-76.163. Therefore, KOVR has a "legal" interest in the outcome of this proceeding. See Hatco-60, 60 R.R.2d 1521, 1523, n.1 (1986).

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"commonality" standards required for an amendment to a hyphenated television market.

The Commission established procedures for the "hyphenation" of a television market, by including an additional community or communities in one of the top 100 television markets listed in Section 76.51, in order to "equalize competition" between television stations in the same market where these stations compete for economic support. 2/ The Commission permits the hyphenation of a television market only where stations in both the proposed and existing designated communities of the television market "can and do, both actually and logically, compete." 3/ The Commission also requires stations to demonstrate "commonality" between the proposed and existing designated communities of the television market. 4/ The Commission has identified the following four factors as relevant to its decisions to amend television markets:

1. The distance between the proposed community and the existing designated communities;
2. Whether cable coverage would extend beyond the station's Grade B contours if the Commission amends the market;
3. The presence of a clear showing of a particularized need by the station requesting the change of market designation; and
4. The benefit to the public of such an amendment. 5/

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2/ Cable Television Report and Order, 36 F.C.C.2d 143, 176 (1972).

3/ See, e.g., Major Television Markets (Fresno-Visalia, California), 57 R.R.2d 1122 (1985).

4/ Report and Order (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2978 (1993).

5/ See, e.g., TV 14, Inc. (Rome, Ga.), 7 FCC Rcd 8591, 8592 (1992). Enumeration of these factors does not exclude consideration of other relevant factors.

KFCB does not compete with other stations in the San Francisco-Oakland-San Jose television market, nor can it demonstrate commonality between Concord and the designated communities of the market. In its Petition for Rulemaking, incorporated into its Comments by reference, KFCB glosses over these crucial failings by attempting to establish that it fulfills the four factors listed above. 6/ However, review of the four factors is meaningless without any demonstration of competition between the proposed and existing designated communities, since the Commission must review these factors "consistent 'with the underlying competitive purpose of the market hyphenation rule'." 7/ Moreover, KFCB fails to fulfill the four factors, particularly because hyphenation of the San Francisco-Oakland-San Jose market to include Concord would be contrary to the public interest.

I. KFCB Does Not Compete With Other Stations in the Designated Communities of the San Francisco-Oakland-San Jose Market.

KFCB does not compete for viewers with any other stations in the San Francisco-Oakland-San Jose television market. 8/ As a religious broadcaster, KFCB attracts an entirely different audience than the other stations in the market that broadcast non-religious programming. Apparently, there is only one other religious broadcaster in the San Francisco-Oakland-San Jose television market, KLVX-TV, San Jose, California. 9/ However, KFCB does not compete with KLVX-

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6/ KFCB's Petition for Rulemaking, incorporated into KFCB's Comments by reference, at 4-7.

7/ NPRM at 1 (quoting TV 14, Inc. (Rome, Ga.), 7 FCC Rcd at 8592).

8/ In fact, KFCB fails to provide any evidence that viewers in the areas surrounding San Francisco, Oakland and San Jose even watch KFCB. See Great Western's Comments at 6.

9/ See Broadcasting & Cable Yearbook 1993, at C-11-C-12.

TV either, because KFCB and KLVX-TV are controlled by the same parent company. 10/

Given KFCB's unique audience, KFCB also does not compete with other stations in the market for advertising revenue or other economic support. KFCB failed to describe its sources of economic support, to compare its advertisers or contributors with the advertisers or contributors of the other stations in the market, or to provide any other evidence of competition among the stations for economic support. KFCB merely asserted that Concord is close to the designated communities of the market and that "KFCB derives over 90 percent of its revenue from cities other than Concord within the market." 11/ Proximity alone does not create competition. The fact that KFCB derives over 90 percent of its revenue from cities other than Concord within the market is so vague that it has no bearing on the existence of competition. 12/ In view of these facts, it is clear that KFCB and the other stations in the market do not compete for the same economic support. Indeed, it appears that KFCB, unlike the other stations, relies heavily on

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10/ See Viacom's Comments at 5-6, Appendices A-B. The licensees of KFCB and KLVX-TV joined resources to form a parent company, the United Christian Broadcasting Network, for the purposes of "jointly programming, managing and eventually owning and operating broadcasting stations..." Id. at 3, Exhibit 1.

11/ KFCB's Petition for Rulemaking, incorporated into KFCB's Comments by Reference, at 5.

12/ For instance, the entire 90 percent could originate within a 35-mile radius of Concord. In such a case, an amendment of the television market would do nothing to equalize competition. The 90 percent figure is also subject to suspicion because KFCB stated in a Petition to modify its ADI for must carry purposes that it derives 30 percent of its revenue from programming aired or retransmitted in Sacramento County which is outside of the San Francisco-Oakland-San Jose market. See KFCB's Petition for Special Relief, filed Sept. 10, 1993 (seeking inclusion of Sacramento in KFCB's television market for must-carry purposes); Great Western's Comments at 8, n.15.

individual contributions for financial support. 13/ Since there is no competition between the stations, the critical element for hyphenation of the television market is missing.

II. KFCB Fails To Establish A Commonality Between Concord And The Designated Communities Of The San Francisco-Oakland-San Jose Tel. Market.

KFCB has also failed to establish that any common links exist between Concord and the designated communities, whether such links are cultural, social economic, or related to copyright treatment, transmitter positioning or programming costs. 14/ Unlike Concord, San Francisco, Oakland and San Jose, are major urban centers. Indeed, the only evidence of commonality provided by KFCB involved the communities' mutual proximity to a body of water. 15/

III. Amendment Of The San Francisco-Oakland-San Jose Market To Include Concord is Contrary to The Public Interest.

The proposed amendment to Section 76.51 would provide absolutely no benefits to the viewers of the San Francisco-Oakland-San Jose market. On the contrary, it could decrease the diversity of programming available on some cable systems in the region, because the proposed amendment would force some cable operators to carry both KFCB and KLVX-TV, even though they are commonly owned and air very similar programming, in place of other unique

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13/ See Viacom's Comments at 5-6.

14/ See Great Western's Comments at 3-5.

15/ KFCB's Petition for Rulemaking, incorporated by reference as KFCB's Comments, at 1.

programming. 16/ Moreover, the proposed amendment would severely restrict the program exclusivity and network nonduplication rights of KOVR and other stations in the Sacramento-Stockton-Modesto television market.17/ The Sacramento-Stockton-Modesto television stations, including KOVR, could lose viewers as a result of this restriction and thus could lose some of the resources needed to continue providing their high level of programming to viewers in their market..

If the Commission amends the San Francisco-Oakland-San Jose television market to include Concord, California, it will be forced to amend television markets whenever a licensee merely demonstrates its proximity to the designated communities of a market and a need to limit its copyright liability. Thus, adoption of this proposed amendment would have the unintended consequence of causing a surge in filings with the Commission to amend television markets.

#### IV. Conclusion

In sum, KFCB utterly fails to demonstrate that Section 76.51 must be amended to include Concord in the San Francisco-Oakland-San Jose television market. It does not compete with any San Francisco-Oakland-San Jose stations for advertisers or viewers. In addition, the City of Concord has little in common with San Francisco, Oakland and San Jose. Finally, the proposed amendment would be contrary to the public interest by harming viewers, by undercutting the rights of stations in the Sacramento-Stockton-Modesto market, and by causing a surge in filings to amend television markets.

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16/ See Viacom's Comments at 5-6, Appendices A-B.

17/ 47 C.F.R. §§ 76.92, 76.97, 76.151, 76.163.

For the foregoing reasons, KOVR respectfully urges the Commission to reject the proposed amendment to Section 76.51 to include Concord in the San Francisco-Oakland-San Jose television market.

Respectfully submitted,

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October 7, 1993

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a copy of the foregoing Reply Comments was mailed, postage prepaid by first class mail, this 7th day of October 1993, to the following:

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